IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4674 OF 2006

ALONGWITH

WRIT PETITION NOs. 4675 & 4676 of 2006

J.N. Marshall Private Limited.... Petitioner

versus

State of Maharashtra & ors ... Respondents.

Shri E.P.Bharucha Sr. counsel with C.E.Bharucha and Mohan Salian, B.Das i/b.Gagrat & Co. for the petitioner.

Shri N.V. Walawalkar Sr. adv. with G.K.Keluskar, D. More, S. Prabha for Respondents 2 to 4.

Shri S.R.Nargolkar AGP for Respondent no.1.

CORAM; V.G. PALSHIKAR Acg.C.J.&
V.M. KANADE, J.

DATED; 25TH JULY, 2006.

P.C:

1. By these petitions, the petitioner challenges the entire land acquisition proceedings commenced by the respondents under the provisions of the Land Acquisition Land Act 1894. It is an undisputed factual situation that award as contemplated by section 12 of the Land Acquisition Act has been passed before these petitions were filed.

2. When the matter was taken up for admission, the learned counsel for the petitioner considered the judgments of this court as also of the Supreme Court of India and submitted, relying on certain other judgments that such a petition is tenable even after the award under section 12 is passed.

3. Relying on a judgment of the Supreme Court in **State of Bihar Vs. Dhirendra Kumar and others reported in (1995) 4 S.C.C. page 229,** it is contended by the learned advocate on behalf of the petitioner that the Supreme Court has in this judgment laid down that the Land Acquisition Act 1894 being a complete Code in itself, a civil suit to challenge the proceeding under that Act is not tenable and observations of the Supreme Court in this matter are contained in para 3 where after considering the scheme of the Act The Supreme Court has observed thus:

> *"We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under section 9 of CPC stands excluded, and civil court has no jurisdiction to go into the question of the validity or legality of the notification, u/s. 4 and declaration u/s.6, except by the*

High Court in a proceeding under Article 226 of the Constitution."

This judgment of 1995 therefore apparently held that a civil suit is not maintainable and reliance was also placed on a Division Bench judgment of this court in its appeal, **in Leela Nagesh Mandke and ors. Vs. The State of Maharashtra and ors. reported in 206Vol.108(3)Bom.L.R.1841,** wherein relying on the 1995 judgment of the Supreme Court, this court held that civil court does not have jurisdiction to question any proceedings under the Land Acquisition Act of 1894.

4. Reliance was then placed on the decision of the Supreme Court in **Narayan Prasad Agrawal Vs. State of M.P. and others reported in (2003) II S.C.C. page 456** where again a suit was held not to be the proper remedy.

5. Then the Supreme Court has in its decision in **Municipal Council Ahmednagar and anr.Vs. Shah Hyder Beig and ors. reported in AIR 2000 S.C.Page 671,** has categorically held in para 17 that a writ petition, after passing of the award under the Land Acquisition Act, is not tenable. The wording of the Supreme Court in this judgment are unequivocal.

"In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this court."

6. In the face of such a clear mandate by the Supreme Court of India, and after some other judgments were noticed, it is not open for this court sitting under Article 226 to take a view contrary to the one expressed by the Supreme Court of India in para 17 of the above judgment.

7. There is yet another reason which we must note regarding the binding nature of precedents noted down by the Supreme Court of India. We have already observed, that the wordings of para 17 of the AIR 2000 judgment are very clear and unambiguous, having the force of precedents as contemplated by Article 141 of the Constitution of India. In such circumstances, we must keep in mind the dicta of the Supreme Court of India in the case of **Air India Cabin Crew Association Vs. Yeshawinee Merchant and others reported in AIR 2004 S.C. page 187.** There the Supreme Court very heavily criticised the High Court for taking recourse of certain subsequent events for sidelining the dicta of the Supreme Court. In the present case also it was

the contention of the learned Counsel Shri Bharucha on behalf of the petitioner that certain judgments pertaining to the maintainability of a civil suit or writ petition having not been considered, observations in para 17 are liable to be read down. The Supreme Court in the above case have very clearly considered the possibility of reading down a judgment of the Supreme Court of India. The Supreme Court of India has observed in the said case as under.

> *"45. It is surprising that the High Court in the impugned judgment completely side stepped the legal issues firmly settled in the decision of three Judges' Bench of this Court in Nergesh Meerza's case (supra) which were binding on it. By the impugned judgment, the High Court has indirectly nullified the effect of this Court's decision in case of Nergesh Meerza (supra) and in doing so relied on subsequent event. The subsequent event is that for fresh recruits after 1997 in the services of Air India, which is now a company formed under the Air Corporation Act of 1994, the male and femal cabin crew members have been merged into a common cadre with uniform service conditions.* Recourse to this

subsequent event could not be made to water down the binding effect of judgment of this Court in Nergesh Meerza's case (supra). *The subsequent event would not have changed the pre 1997 conditions of service of male and female members of the cabin crew. How could the High Court in its judgment observe that the differences in qualification, pay, promotional avenues and other conditions of service between male and female cadre of the crew have been obliterated only because for fresh recruits the cadres have been merged after 5-6-1997. We totally disapprove the reasoning and conclusions of the High Court in the impugned judgment that differential treatment which was justified earlier when Nergesh Meerza's case (supra) was decided, has become arbitrary and unreasonable becauase of the passage of time and merger of cadres after 1997. How could the High court lose sight of the fact that apart from the binding decision of this Court in Nergesh Meerza's case (supra), air hostesses of executive cadre, who were all pre 1997 recruits were bound, with majority of air hostesses of workmen category, by the agreements and settlements as also awards*

reached between them and the employer/Air India.

46. The High Court, we must say, acted against judicial discipline in taking a view in favoaur of respondent/association on an erroneous basis that with the passge of time differences in service conditions between male and female cadres have been obliterated and the decision of the Nergesh Meerza's case (supra) does not bind the High Court from making a declaration that lower retirement of air hostesses from flying duties is a discrimination based only on sex which is violative of Arts. 15 and 16 of the Constitution."

8. In the face of these observations which blamed this court of acting against judicial discipline, we cannot venture to again reading down a decision delivered by the Supreme Court of India to invite similar objections. In our opinion, therefore, these petititons are not maintainable and are therefore dismissed.

9. After the above order was dictated, a request was made on behalf of the petitioner, for continuing the

interim relief granted earlier on 6th July 2006. The learned counsel appearing on behalf of the acquiring body states that possession of the land in question has factually been taken. In such circumstances, we see no reason to continue that order. Hence the prayer is rejected.

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